Supreme Court, U.S.
FILED
OCT 3 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 628

EDWARD J. KAZUBOWSKI,

Petitioner,

VS.

BETTY DOLAR KAZUBOWSKI,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

PETITIONER'S REPLY BRIEF

EDWARD J. KAZUBOWSKI, *Pro Se*
133 E. Division Street
Kewanee, Illinois 61443

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

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Petitioner hereby makes reply to the answer of the respondent opposing the petition, under the same roman numeral headings as the related subject is raised in respondent's answer.

I.

THE QUESTIONS RAISED HAVE NOT BEEN HERETOFORE PRESENTED BEFORE THIS COURT.

The respondent's recital of some of the facts, while omitting and distorting other facts in this peculiar, complicated, factual and unique case, in which the State judiciary is a party hereto, is no answer to the federal constitutional questions raised in the trial court, in the Supreme Court of Illinois, in the petition for rehearing and in the petition for a writ of certiorari to the Supreme Court of Illinois, pending review by this Court.

The divorce decree entered June 13, 1966 was not the ordinary divorce case awarded in the Circuit Court of Henry County, Illinois or other Circuit Courts in Illinois.

The refusal of the respondent to answer the constitutional questions pertaining to the orders obtained in violation of due process and equal protection of the laws, and obtained in repeated defiance of the supersedeas approved, in the total amount of $50,000, and her seeking recovery of money on those supersedeas from the sureties, and confiscating the liberty and property of this petitioner without petitioner being afforded any opportunity whatsoever at any time to be heard and to defend, is a flagrant misrepresentation of the facts to this Court and a fraud upon this Court by the respondent and her attorneys.

The respondent cannot deny that which is substantiated by the record and not controverted.

Petitioner presents twenty questions for this Court to review and not fifteen questions as stated by the respondent. Five orders presented in the consolidated appeals to the Illinois Supreme Court were entered after

the filing of the mandate of the Appellate Court of Illinois, Third Judicial District, Case No. 66-101, in the trial court. These orders were questioned in the trial court by petitioner to the extent petitioner was permitted to raise the issues of the lack of power or jurisdiction conferred upon the Appellate Court of Illinois, Third Judicial District, Case No. 66-101, to render that opinion and the orders entered pursuant thereto, and alleged denials of due process and equal protection of the laws. Those issues not determined or ruled upon by the opinion rendered by the Appellate Court of Illinois, Third Judicial District, Case No. 66-101, were declined and refused by the trial court to make a determination thereof. The Illinois Supreme Court declined and refused to rule upon those issues necessary for a determination of this cause.

The breach, repudiation and rescission of the purported "consent decree" by the respondent occurred after the opinion had been rendered by the Appellate Court of Illinois, Third Judicial District, and after the approval of a second additional appeal bond in the said Appellate Court as ordered to be given by this petitioner.

The respondent's statement on page 2 of her answer to the petition for a writ of certiorari to the Supreme Court of Illinois, merely alleges:

> "Defendant Edward J. Kazubowski immediately violated the property settlement decree and all of the subsequent litigation arises from his objections to the divorce *decrees* and the enforcement proceedings". (Italics added).

The respondent does not, however, make reference to any part of the records on appeal to substantiate this position. To the contrary, petitioner substantiates the entry

of a purported supplementary property decree entered on August 31, 1966, without notice to petitioner and without an opportunity to petitioner to be heard and to defend and protect his property. The circumstances of judicial usurpation, domination and oppression reflected in the consolidated cases on appeal to the Illinois Supreme Court, consist of repeated judicial acts, evolving around the void property decree, which were calculated to deprive, and have henceforth continuously deprived, this petitioner of his liberty and property without due process and equal protection of the laws and of all existing remedies for the enforcement of petitioner's rights.

Petitioner's references to the records on appeal clearly establish that the trial judge who entered the decree on August 31, 1966, on the exclusive basis of a claimed "stipulation" of August 15, 1966, executed and signed by a person or persons as "Perona & Perona", as attorneys for this petitioner, knew the document was not authorized by petitioner. The record clearly establishes that nonetheless, that judge declined to conduct *any* hearing or to hear *any* evidence relative either to petitioner's motion to void that "stipulation" or to the property division questions remaining before the court for legitimate adjudication, prior to the entry of the property decree. After timely objections and motion to vacate the void property decree was filed, alleging a denial of due process of law, the trial court declined and refused to rule on the objections and motion to vacate the void property decree. Instead, the trial judge entered a simultaneous order on September 15, 1966, overruling the objections and motion to vacate the property decree, and summarily found petitioner in contempt of court, in absentia, for not complying September 1, 1966, with the

capricious property decree entered August 31, 1966. Petitioner immediately, after the entry of the simultaneous hand-written order of September 15, 1966, perfected an appeal from the purported property decree, on the issues of the freehold involved. The separate, supplementary property decree did not contemplate or authorize other proceedings or process to enforce it, but provided, among other things, for a waiver of alimony, and, departed from the unauthorized document entitled "stipulation" in several material respects, one of which was the provision that the respondent retain her name on the real estate as a joint tenant.

On September 16, 1966, petitioner was ordered to present an appeal bond for approval of the trial court within five days to act as a supersedeas to stay the proceedings. Upon the giving of the appeal bond and the approval of the appeal bond as a supersedeas and the filing of the supersedeas in the trial court, the respondent was thereafter awarded orders for the payment of alimony, attorneys fees and expenses pending the appeal from the property decree as though no final decree of divorce had been entered by the trial court on June 13, 1966. To prevent the appearances of the Sheriff and his deputies in the dental office of this petitioner, to coerce, intimidate and threaten petitioner with imprisonment unless payment was made of the order for alimony, attorney fees and expenses pending the appeal, petitioner was ordered to give an additional bond for the additional and subsequent orders entered after the first supersedeas had been approved. Upon the giving of the additional appeal bond, and the approval thereof, the respondent continued to be awarded adverse orders against petitioner for "wilful and contumacious refusal" to comply with the orders of the trial court.

The respondent does not mention the orders awarded to her in repeated defiance of those supersedeas, but remains silent on these issues. The respondent does not mention how she obtained the final decree of divorce on June 13, 1966, and remains silent as to the award of alimony, attorneys fees and expenses awarded her in excess of the jurisdiction conferred upon the Circuit Courts of Illinois, and in defiance of the supersedeas approved. The respondent does not offer any explanation, or citations, for the affirmance of a summary contempt order, or why she would not testify nor be cross examined in this case. To remain silent is to continue to place and shift the burden of proof upon this petitioner. The records on appeal substantiate the contentions of petitioner. A question of public policy is involved, and questions of improprieties and appearances of improprieties of the state judiciary are involved, as is a due process violation accomplished by the state judiciary in the suppression and concealment of $50,000 in appeal bonds, while permitting the respondent to recover money on those orders entered in repeated defiance of those supersedeas, and to confiscate petitioner's liberty and property by the orders entered without jurisdiction and without affording petitioner any opportunity to be heard on the contested issues at any time since June 2, 1966.

A look at the first eleven questions in the petition for a writ of certiorari clearly establishes they raise substantial federal questions under the Constitution of the United States respecting deprivations of liberty and property without due process and equal protection of the laws, and issues which do not relate "to the divorce decrees". The respondent's repeated references to "the divorce decrees" is ambiguous and inconsistent. There is only one final

divorce decree entered June 13, 1966, as admitted by the respondent on page 2 of her answer to the petition for a writ of certiorari.

A look at the "remaining four questions", contended by the respondent to have been considered in the consolidated appeals to the Supreme Court of Illinois, were not considered by the Illinois Supreme Court as clearly indicated by the opinion rendered. There is no mention of the $50,000 approved as supersedeas in the opinion rendered by the Illinois Supreme Court.

II.

SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTIONS OF DEPRIVATIONS OF LIBERTY AND PROPERTY WITHOUT DUE PROCESS AND EQUAL PROTECTION OF THE LAWS WERE RAISED IN THE 1969 ENFORCEMENT PROCEEDINGS TO THE EXTENT PERMITTED PETITIONER BY THE TRIAL COURT.

The respondent's brief statement under Point II of her answer to the petition for a writ of certiorari is without merit. How could these questions have been raised on the prior appeal when the orders were not entered until after the filing of the mandate of the Appellate Court of Illinois, Third Judicial District, Case No. 66-101? This petitioner could not anticipate that the Appellate Court would affirm a summary contempt order against petitioner, in absentia, during a hearing on objections and motion to vacate a supplementary property decree, entered without notice to petitioner and without an opportunity to petitioner to be heard at any time thereafter. Petitioner could not anticipate that the Appellate Court, Case No. 66-101, would render an opinion affirming a "consent decree", and affirm the order for alimony, attorney fees and expenses pending

an appeal from the separate and supplementary property decree, while ruling that the divorce decree had become final on June 13, 1966, because of the failure of petitioner to appeal within the 30-day period. Petitioner could not anticipate that the Appellate Court of Illinois, Third Judicial District, Case No. 66-101, would render an opinion in excess of the jurisdiction or power conferred upon it by the Constitution of the State of Illinois. The constitutional questions raised include and relate to the power or jurisdiction of the Appellate Court to render the opinion. The opinion rendered violates Article III of the Illinois Constitution.

The respondent seeks respectability of the enforcement proceedings in the trial court by the opinion rendered March 24, 1970, by the Illinois Supreme Court.

There have been no hearings on the merits of this cause since the trial by jury on the issues of divorce on June 2, 1966. Petitioner was not permitted any hearing on the contested issues of the illegal contempt mittimus issued March 24, 1969, for the reason the summary contempt order of September 15, 1966 had been affirmed by the Appellate Court opinion, and other reasons stated in the petition.

The Supreme Court of Illinois sanctioned the "strong-arm tactics" of the proceedings in the trial court to extort the sum of $14,000 under duress, by the illegal and improper contempt mittimus. The Clerk of the Circuit Court of Henry County, Illinois, falsely recited the sum of $4,900 *alimony* and the sum of $500 attorney fees were found to be due and owing to the respondent on September 15, 1966. The record of the proceedings on September 15, 1966, clearly establishes the improper summary contempt order entered September 15, 1966, and the illegal and improper con-

tempt mittimus issued March 24, 1969, allegedly based and issued on the order of September 15, 1966.

The opinion rendered by five Justices of the Illinois Supreme Court, with two Justices declining to take part in the consideration or decision of this case, refused to consider the truth of the record. This was an abdication of judicial function. The appeal bonds, approved as supersedeas, and the orders entered in repeated defiance of those supersedeas, are not disputed by the Illinois Supreme Court, but merely suppressed, concealed and ignored.

III.

PETITIONER CLEARLY ESTABLISHES THE NEED FOR REVIEW IN THIS COURT FOR A DETERMINATION OF THE FEDERAL QUESTIONS PRESENTED AND FOR REVIEW OF THE OPINIONS WHICH CONFLICT WITH THE ESSENTIAL REQUIREMENTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS.

It is too elementary to present citations sustaining the proposition that the Fourteenth Amendment to the Constitution of the United States is directed against discriminatory state action. The suppression and concealment of $50,000 in appeal bonds by the Illinois Supreme Court, while permitting the respondent to recover money on those supersedeas for orders entered in repeated defiance of those supersedeas against the sureties on the appeal bonds, without any opportunity to be heard and to defend, and to confiscate this petitioner's liberty and property without any opportunity to be heard on the contested issues, must be declared to be a discriminatory action by the state judiciary against petitioner.

On page 5 of the respondent's answer to the petition for a writ of certiorari, it is stated:

"There is no evidence that he is not able to comply with these orders."

How can there be any evidence if this petitioner is not and has not been afforded any opportunity to be heard, and the respondent does not present any evidence nor any testimony? There are no records of proceedings in the consolidated cases except the record of proceedings of September 15, 1966.

This case has great public importance in that the questions presented in this case may well arise in every divorce case in Illinois, or in every case wherein an appealing party is forced to give an exorbitant and excessive appeal bond within 5 days for approval of the court to act as a supersedeas because of a summary order of contempt, in absentia, which has been affirmed by an Appellate Court of Illinois, and again affirmed by the Illinois Supreme Court. After approval of the appeal bond as a supersedeas, the Illinois Supreme Court sanctions the orders awarded in repeated defiance of that supersedeas. Upon the order to present an additional appeal bond for the additional orders, and upon approval of the additional appeal bond, the trial court is permitted to award an appellee further additional orders in repeated defiance of the supersedeas approved. To stay the mandate of an Appellate Court, the appealing party must comply with the order to stay the mandate. An appellee can proceed to take actions or breach the property decree or order from which the original appeal is taken. The Supreme Court of Illinois sanctions these proceedings and refuses and declines to afford the appealing party a fair or full review of the proceedings in the trial court, and of an opinion rendered in excess of the jurisdiction or power conferred upon the Appellate Courts. To say that

courts have inherent power to deny all rights to defend an action and to render orders and decrees without any hearing whatsoever, is in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends.

If the highest court of a State can be a party to suppress and conceal $50,000 in appeal bonds to allow and permit the appellee to disregard those appeal bonds, and the purpose for which they were ordered to be given, and to deny the appealing party an opportunity to be heard on the contested issues of those orders entered in defiance of those supersedeas, is an abdication of the judicial function. If such power obtains, then the judicial department of Illinois sitting to uphold and enforce the Constitutions, is the only one possessing a power to disregard it. If such authority exists by virtue of their establishment, to compel obedience to law and to enforce justice, then the courts possess the right to inflict the very wrongs which they were created to prevent. The state thus becomes a party actively participating to deprive the appealing party of his liberty and property without due process and equal protection of the laws, and imposes a severe penalty upon the appealing party for taking an appeal.

The opinion rendered by the Illinois Supreme Court totally nullifies the right of an appealing party to a full and fair hearing on appeal. It becomes a matter of prolonged, extensive and expensive litigation, involving a multiplicity of appeals, a multiplicity of actions and a burden and hardship upon the appealing party as a condition of a vindication of his constitutional rights.

CONCLUSION.

For the foregoing reasons the petition for a writ of certiorari to the Supreme Court of Illinois should be granted.

Respectfully submitted,

EDWARD J. KAZUBOWSKI, *Pro Se*
133 E. Division Street
Kewanee, Illinois 61443